



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 26, 1995

Ms. Tamara Armstrong
Assistant County Attorney
County of Travis
P.O. Box 1748
Austin, Texas 78767

OR95-294

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 31198.

The Travis County District Attorney's Office received an open records request for photographs and "police reports" pertaining to a murder that occurred on March 20, 1992. You contend that the requested records may be withheld from the public pursuant to, *inter alia*, section 552.108 of the Government Code.¹

Section 552.108 of the Government Code, known as the "law enforcement" exception, excepts from required public disclosure:

- (a) A record of a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime
- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement

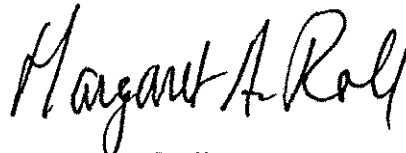
¹Because we resolve your request under section 552.108, we need not address each of the other exceptions you raise.

Traditionally, when applying section 552.108, our office has distinguished between cases that are still under active investigation and those that are closed. Open Records Decision No. 611 (1992) at 2. In cases that are still under active investigation or prosecution, this section excepts from required public disclosure all information except that generally found on the first page of the offense report. *See generally* Open Records Decision No. 127 (1976) (citing *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976)).

The records at issue pertain to a murder investigation that led to separate criminal trials of the criminal defendants. This office has learned that since the time of your request for an open records decision, the Third Court of Appeals has reversed and remanded one of the criminal convictions and that that case is currently before the Court of Criminal Appeals. Because there exists at this time a reasonable possibility that your office may have to retry its case against the criminal defendant who won his appeal before the Third Court of Appeals, we conclude that you may withhold the requested information at this time in its entirety pursuant to section 552.108.²

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Government Section

MAR/RWP/rho

Ref.: ID# 31198

²You also inquire whether the requested information is deemed confidential under section 51.14(a) of the Family Code which makes confidential, with certain exceptions not applicable here, records of a prosecuting attorney "relating to a child who is a party to a proceeding *under this title*." (Emphasis added.) Because the juvenile defendant was tried as an adult in accordance with section 54.02 of the Family Code, the resulting criminal trial was not a proceeding subject to the provisions of the Family Code. Consequently, these records are not confidential under section 51.14(a).

Enclosures: Submitted documents

cc: Mr. Ken Bates
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(w/o enclosures)